

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

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**Canned Tomatoes Deviating From Identity Standard; Extension of
Temporary Permit for Market Testing**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Del Monte Corp. to market test canned tomato products that deviate from the U.S. standard of identity for canned tomatoes. The extension will allow the permit holder to continue to collect data on consumer acceptance of the products while the agency takes action on a petition to amend the standard of identity for canned tomatoes that was submitted by the permit holder.

DATES: The new expiration date of the permit will be either the effective date of a final rule to amend the standard of identity for canned tomatoes that may result from the petition or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS-822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119-3575, to market test canned tomato products that deviate from the U.S. standards of identity for canned tomatoes

§ 155.190 (21 CFR 155.190) (67 FR 43325, June 27, 2002). The agency issued the permit to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

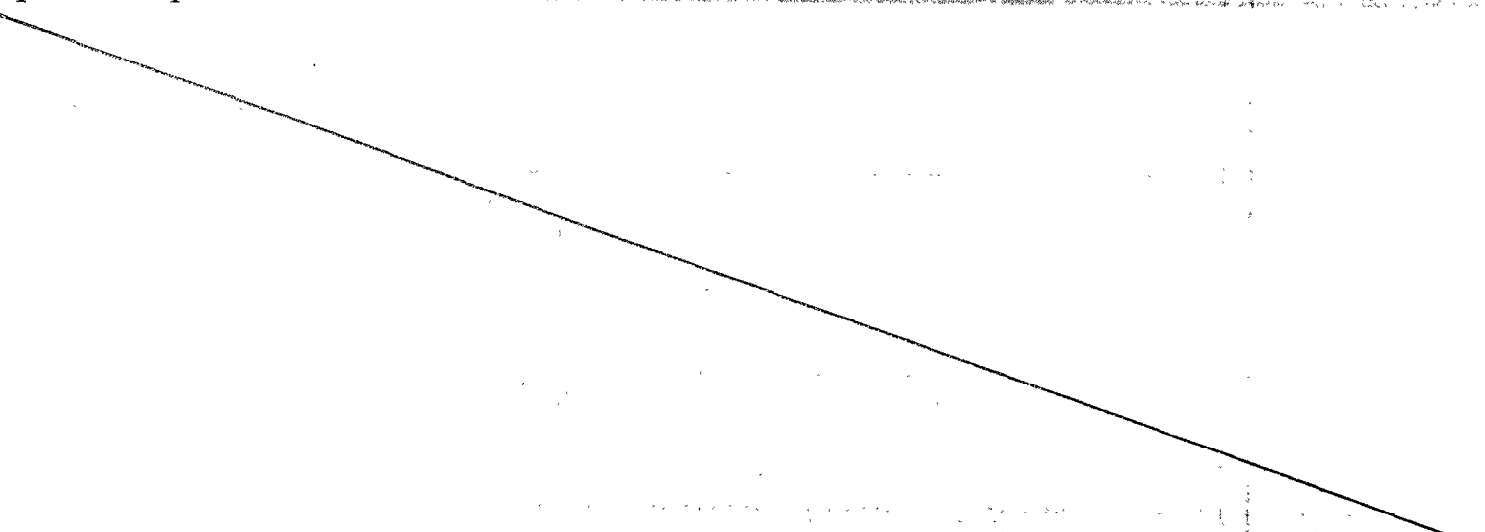
The permit covered limited interstate marketing tests of products identified as “Stewed Tomatoes, Original Recipe,” “Chunky Tomatoes, Pasta Style,” “Diced Tomatoes, basil, garlic & oregano,” “Diced Tomatoes, garlic & onion,” “Diced Tomatoes, green pepper & onion,” “Tomato Wedges,” “Zesty Chunky Tomatoes, Chili Style,” “Stewed Tomatoes, Cajun Recipe with pepper, garlic, and Cajun spices,” “Stewed Tomatoes, Italian Recipe with basil, garlic & oregano,” “Stewed Tomatoes, Mexican Recipe with garlic, cumin, and jalapeños,” and “Stewed Tomatoes, no salt added.” These canned tomato products deviate from the U.S. standard of identity for canned tomatoes (§ 155.190) in two ways. First, a liquid carbohydrate sweetener, either corn syrup or high fructose corn syrup, is used as an optional ingredient in lieu of dry nutritive carbohydrate sweeteners. The liquid carbohydrate sweetener, corn syrup or high fructose corn syrup, is used in a quantity reasonably necessary to compensate for the tartness resulting from added organic acids, except that such addition of the liquid sweetener, in no case, may result in a finished canned tomato product with a tomato soluble solids content of less than 5.0 percent by weight as defined in 21 CFR 155.3(e) (which accounts for any added salt) and accounting for the soluble solids of the liquid sweetener. Second, the permit provided for use of the term “chunky” in lieu of the styles (i.e., whole, sliced, diced, and wedges) required by the standard. Except for the use of a liquid sweetener and the use of the alternative term “chunky” on some products, the test products meet all the requirements of the standard.

On April 23, 2003, Del Monte Corp. requested that its temporary marketing permit be extended to allow for additional time for the market testing of its test products. The petitioner requested FDA to amend the standard of identity for canned tomatoes. In addition, Del Monte Corp. also requested that additional varieties of canned tomatoes be included under this permit extension. The additional products are as follows: (1) Del Monte Brand "Diced Tomatoes, Petite Cut, garlic and olive oil;" (2) Contadina Brand "Stewed Tomatoes with onions, celery, and green peppers," "Stewed Tomatoes with garlic, oregano, and basil, Italian Style," "Diced Tomatoes with roasted garlic," "Diced Tomatoes, Italian Herbs," "Diced Tomatoes with Roasted Red Pepper," "Diced Tomatoes, Primavera with zucchini, bell peppers, and carrots," "Diced Tomatoes, Marinara with burgundy wine and olive oil;" and (3) S&W Brand "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 14 1/2 ounces," "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 28 ounces," "Diced Tomatoes in tomato juice with roasted garlic," "Stewed Tomatoes with onion, celery, and bell pepper," "Stewed Tomatoes with bell pepper, celery, and onion, no salt added," "Diced tomatoes, Petite Cut, with roasted garlic and sweet onions," "Stewed Tomatoes, Mexican Recipe with mild chili and Mexican seasoning," and "Stewed Tomatoes, Cajun Recipe with bell pepper, onion, and Creole spices."

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified in the original permit (67 FR 43325) as well as to permit limited interstate marketing tests of additional canned tomato products identified in the previous paragraph. FDA is inviting interested persons to participate in the market test under the conditions that apply to Del Monte Corp. except that the designated

area of distribution shall not apply. Any person who wishes to participate in the extended market test must notify, in writing, the Team Leader, Regulations and Review Team, Division of Food Labeling and Standards, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. The notification must include a description of the test product to be distributed, a justification statement for the amount requested, the area of distribution, and the labeling that will be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by applicable sections of 21 CFR part 101.

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the temporary permit granted to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119-3575 to provide for continued marketing tests of approximately 10.3 million cases (226.6 million pounds or 103.0 million kilograms in weight) annually of canned tomatoes previously identified . FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule to amend the



standard of identity for canned tomatoes that may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: 8/22/03
August 22, 2003.

Christine Taylor

Christine Taylor,
Director, Office of Nutritional Products, Labeling and Dietary Supplements,
Center for Food Safety and Applied Nutrition.
[FR Doc. 03-????? Filed ??-??-03; 8:45 am]

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Dawn P. Hawkins